

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 2/8/2021

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UNITED STATES OF AMERICA
ex rel. SW CHALLENGER, LLC,

Plaintiffs,

- against -

EVICORE HEALTHCARE MSI, LLC,

Defendant.
-----X

19 Civ. 2501 (VM)

ORDER

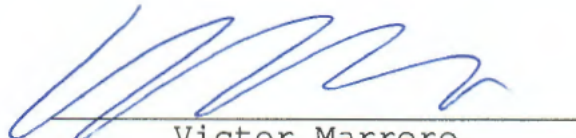
VICTOR MARRERO, United States District Judge.

On January 28, 2021, the defendant in the above-captioned matter filed an unopposed letter request to unseal the Complaint and "any notice of declination filed by the U.S. Attorney's Office." (See Dkt. No. 32.) The Court hereby **GRANTS** the request.

The Clerk of Court is directed to unseal the Complaint in the above-captioned case (see Dkt. No. 1), and enter the attached declination letter into the public docket.

SO ORDERED.

Dated: New York, New York
8 February 2021



Victor Marrero
U.S.D.J.



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, 3rd floor
New York, New York 10007*

January 21, 2020

UNDER SEAL

BY HAND

Honorable Victor Marrero
United States District Court Judge
United States District Court
Southern District of New York
500 Pearl Street, Suite 1040
New York, New York 10007

Re: *United States of America et al. ex rel. SW Challenger, LLC, v. Evicore Healthcare
MSI, LLC et al.*, 19 Civ. 2501 (VM) (Under Seal)

Dear Judge Marrero:

This Office represents the United States (the "Government") in the above-referenced *qui tam* action filed pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*, as amended. The United States and the State Plaintiffs¹ have decided not to intervene in this action. Enclosed please find a signed original of the Notice of Election to Decline Intervention, as well as a proposed Order in connection with this Notice. The Government is filing this notice of declination on behalf of the States with their consent. We respectfully request that the Court sign the proposed Order and send both the Government's Notice and the Order to the Clerk for filing.

In the event the Court approves the proposed Order, we respectfully request that the Court provide this Office with a copy, and we have enclosed a self-addressed envelope for that purpose. We will then serve a copy of the signed Order on the State Plaintiffs and counsel for the relator.

¹ Relator has also named as plaintiffs in this action the states of Alaska, Connecticut, Florida, Illinois, Louisiana, Michigan, Montana, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Texas, and Washington.

Thank you for your consideration of this request.

Respectfully,

GEOFFREY S. BERMAN
United States Attorney for the
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By: 

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Encls.

cc: BY EMAIL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA; and
the STATE OF ALASKA,
the STATE OF CONNECTICUT,
the STATE OF FLORIDA,
the STATE OF ILLINOIS,
the STATE OF LOUISIANA,
the STATE OF MICHIGAN,
the STATE OF MONTANA,
the STATE OF NEW JERSEY,
the STATE OF NEW MEXICO,
the STATE OF NEW YORK,
the STATE OF OKLAHOMA,
the STATE OF TENNESSEE,
the STATE OF TEXAS, and
the STATE OF WASHINGTON

ex. rel. SW CHALLENGER, LLC,

Plaintiffs,

v.

EVICORE HEALTHCARE MSI, LLC, and
WELLCARE HEALTH PLANS, INC.;

Defendants.
-----X

19 Civ. 2501 (VM)

UNDER SEAL

**NOTICE OF ELECTION
TO DECLINE INTERVENTION**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States and the States named as plaintiffs¹ in the above-captioned action hereby notify the Court of their decision not to intervene in this action.

Although the United States decline to intervene, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the United States and the States requests that, should the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the moving party (or parties) be required to solicit the written consent of the United States and the States before applying for Court approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings and briefs filed in this action be served upon the United States. The United States also requests that the Court direct relator’s counsel to serve on the United States any orders issued by the Court. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator’s action or claims under 31 U.S.C. § 3730(e)(4).

¹ Relator has named as plaintiffs in this action the states of Alaska, Connecticut, Florida, Illinois, Louisiana, Michigan, Montana, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Texas, and Washington.

The United States also requests that it be served with all notices of appeal.

The States pursuant to their respective False Claims Acts or analogous state statutes: (1) reserve their right to intervene at a later date upon a showing of good cause, *see, e.g.*, N.Y. State Fin. Law § 190(5)(a); (2) request that all pleadings filed in this action be served upon the States, *see, e.g.*, N.Y. State Fin. Law § 190(2)(f); (3) request that the Court direct the relator's counsel to serve upon the States any orders issued by the Court, *see, e.g.*, N.Y. State Fin. Law § 190(2)(f); (4) reserve their right to order any deposition transcripts in this case; and (5) request that if the relator or the defendants propose that any claims be dismissed, settled, or otherwise discontinued, the Court require that such litigant(s) solicit the written consent of the States before applying for Court approval, *see, e.g.*, N.Y. State Fin. Law § 190(5)(a).

Dated: New York, New York
January 21, 2020

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: 

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA; and
the STATE OF ALASKA,
the STATE OF CONNECTICUT,
the STATE OF FLORIDA,
the STATE OF ILLINOIS,
the STATE OF LOUISIANA,
the STATE OF MICHIGAN,
the STATE OF MONTANA,
the STATE OF NEW JERSEY,
the STATE OF NEW MEXICO,
the STATE OF NEW YORK,
the STATE OF OKLAHOMA,
the STATE OF TENNESSEE,
the STATE OF TEXAS, and
the STATE OF WASHINGTON

ex. rel. SW CHALLENGER, LLC,

Plaintiffs,

v.

EVICORE HEALTHCARE MSI, LLC, and
WELLCARE HEALTH PLANS, INC.;

Defendants.
-----X

19 Civ. 2501 (VM)

UNDER SEAL

ORDER

The United States of America (the “Government”), by its attorney, Geoffrey S. Berman, having now declined to intervene pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), with respect to the claims raised in the Complaint filed by the relator in the above-captioned

action; and the States which are named as co-plaintiffs in this action (the “States”) having also declined to intervene pursuant to their respective false claims acts or analogous statutes with respect to the claims raised in the above-captioned *qui tam* action;

IT IS ORDERED THAT:

1. The Complaint shall be unsealed thirty days after entry of this Order; and, in the event that relator has not moved to dismiss this action, service upon defendants by the relator is authorized as of that date. If the relator voluntarily dismisses the complaint pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure within this thirty-day period, the relator may seek to modify this Order with the consent of the United States and the States or by motion on notice to the United States and the States.
2. The Notice of Election to Decline Intervention shall be served by the relator upon defendants only after service of the complaint.
3. Except for the Complaint, this Order and the Notice of Election to Decline Intervention, all other contents of the Court’s file in this action as of the date of this Order shall remain under seal and not be made public or served upon the defendants.
3. Upon the unsealing of the Complaint, the seal shall be lifted as to all matters occurring in this action subsequent to the date of this Order.
4. The parties shall serve all pleadings and motions filed in this matter, including supporting memoranda, upon the Government and the States. The Government and the States may order any transcripts of depositions. The Government and the States may seek to intervene with respect to the allegations in the relator’s Complaint, for good cause, at any time, or to seek dismissal of this action.

5. All further orders of this Court in this matter shall be sent to the Government and the States by relator.

6. Should the relator or the defendants propose that the Complaint or any of its allegations be dismissed, settled, or otherwise discontinued, or that a defendant be dismissed from the case, the moving party (or parties) must solicit the written consent of the Government and the States before applying for Court approval.

Dated: _____, 2020

SO ORDERED:

HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE